

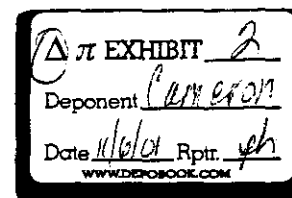
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Pamela J. Cameron, Ph.D., is a Principal of Exeter Associates, Inc., an economic consulting firm providing economic studies and expert testimony for private clients, governmental agencies and organizations. Dr. Cameron specializes in the economics of public utility regulation, the energy sector, antitrust, and damage assessment and testifies in the areas of pricing/costing methodology, rate rebalancing, rate design, incentive rates, cost of capital price cap proposals, universal service, non-accounting and structural safeguards and other issues related to industry restructuring in the telecommunications, electric utility and natural gas industries. A copy of Dr. Cameron's curriculum vitae is attached.

Marvin H. Kahn, Ph.D., is a founding Principal of Exeter Associates, Inc. Dr. Kahn specializes in economic matters regarding the regulation of firms operating in both competitive and monopoly markets, including unbundling, costing procedures, industry regulation including merger analysis, measures of market competition, and alternative regulatory frameworks in the telecommunications, energy and postal industries. A copy of Dr. Kahn's curriculum vitae is attached.

Dr. Cameron and Dr. Kahn will testify that the class sizes for the "Big 6" embedded base telephone sets (*i.e.*, the Traditional Rotary, Traditional Touchtone, Princess Rotary, Princess Touchtone, Trimline Rotary, Trimline Touchtone) are as set forth in the attached spreadsheets (Appendix A). The number of sets in service in the class (the "Class SIS") decreased every month as class members terminated their leases. At the same time, however, there were "ins" which added to the total number of sets in service ("SIS"). Sets moving inward identified in defendants' documents as "New-INS" are assumed to be "new" and thus not part of the class. Sets moving inward identified in defendants' documents as "Existing-INS" and "UTEC Reinstates" are assumed to be a subset of the Class SIS or, alternatively, are assumed to be "new" and thus not part of the Class SIS. Sets moving out could be presumed to consist of only class members, to consist of no class members, or to consist of some combination of the two. For calculation purposes, Dr. Cameron and Dr. Kahn assumed that the probability of a set leaving is the same whether the set is in the class or not.

Dr. Cameron and Dr. Kahn began their the calculation of the Class SIS with January 1984. At that time, all sets in place are Class SIS. The outward movements that month consisted 100% of class members, and the inward inward movements consisted 100% of non-class members. Dr. Cameron and Dr. Kahn then used the ratio of Class SIS to total SIS to calculate what percentage of Existing INS, UTEC Reinstates, and outwards were Class SIS for the following month. Dr. Cameron and Dr. Kahn repeated this calculation for each month throughout the class period.



Dr. Cameron and Dr. Kahn will testify that AT&T did not base its lease rate increases for the Big 6 telephone sets after January 1, 1986, on the cost of providing the equipment and service plus a reasonable profit. Nor did AT&T have to consider what competitors were charging to lease similar equipment since there was no such direct competition. Rather, AT&T based its rate increases solely on how much it could charge consumers without significantly accelerating the erosion rate.

Dr. Cameron and Dr. Kahn have calculated damages for the class (*see* Appendix A), and they have calculated the reasonable lease rate for each of the Big 6 (set out in Appendix B). For three damage calculation scenarios, Dr. Cameron and Dr. Kahn calculate AT&T's and Lucent's costs using direct costs and fully distributed costs ("FDC"). Fully distributed costs are direct costs with operating expenses marked up by 40% for general and administrative overheads based upon AT&T data and annual reports filed with various state and federal agencies. In a fourth damage calculation scenario, Dr. Cameron and Dr. Kahn treat the lease rates in effect on January 1, 1986, as reasonable and then trend them upward over time based upon general inflation rates.

In scenario 1, Dr. Cameron and Dr. Kahn calculate a reasonable lease rate using the total cost of refurbishment or "nonrecurring cost" (NRC) as a proxy for market value. The NRC is translated into a monthly cost by annuitizing it over the location life at an assumed 20% before tax cost of capital (*i.e.*, the cost of money plus the associated corporate income taxes). AT&T, in a number of discovery documents, uses a 12.5% after tax and a 17.5% before tax cost of capital. In addition, the FCC approved a 12.5% cost of capital (after tax) around the time of the asset transfer from the RBOCs to AT&T.

In scenario 2, Dr. Cameron and Dr. Kahn calculate a reasonable lease rate using the sales in place (SIP) price as a proxy for the market value of the telephone set (this price obviously represents an amount that AT&T considered remunerative and, if anything, was overstated inasmuch as the SIP was within the exclusive control of AT&T). The SIP price is therefore assumed to include operating expenses and a reasonable profit rate.

In scenario 3, Dr. Cameron and Dr. Kahn calculate a reasonable lease rate using a "regulated rate of return" approach. This scenario represents the classical regulation formula whereby the company is allowed the opportunity to set rates at a level that recovers (a) the return on and of capital, (b) refurbishment costs and (c) all legitimate operating expenses (*e.g.* labor, taxes, etc.). The return of capital is depreciation. The return on capital is the cost of financing the undepreciated asset value.

In scenario 4, Dr. Cameron and Dr. Kahn calculate a reasonable lease rate based on the lease rates charged during the transition period of January 1, 1984, to December 31, 1985. Dr. Cameron and Dr. Kahn then applied a general rate of inflation, as measured by the Gross Domestic Product Price Index (the "GDPPI").

Dr. Cameron and Dr. Kahn calculated damages for the Class using the lease rates actually charged by defendants from which they subtracted the reasonable rates calculated under each of the four scenarios.

Dr. Cameron and Dr. Kahn base their opinions on their professional training, experience and expertise, and on deposition testimony and discovery documents. In accordance with the agreement reached between the parties, Class Counsel will produce all such documents and Dr. Cameron's and Dr. Kahn's file 10 days prior to their depositions. As discovery continues, if new data or information becomes available which bears upon their opinions, Dr. Cameron or Dr. Kahn may supplement their opinions and any such supplemental opinions will be timely provided to Defendants.

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[1] mentioned, which I am not sure. One of them was just
[2] found but I don't know if the depositions have yet —

[3] Q: With the exception of the three depositions
[4] potentially, whether they are in there or not, you
[5] don't know, of Turkurst, Cameron and Kahn, that file
[6] is complete?

[7] A: I believe so, yes, sir.

[8] Q: All right. What happens at the Federal
[9] Communication Commission between the time a notice of
[10] proposed rulemaking is released and an order based on
[11] that notice of proposed rulemaking is adopted?

[12] A: There is not a single procedure that
[13] happens. It varies widely in different cases. One
[14] of the things that — that always happens is that in
[15] response to a notice of proposed rulemaking, there
[16] are at least two rounds of comments open to the
[17] public, initial comments and reply comments, which
[18] are filed in accordance with the schedule which is
[19] published in the Federal Register. There virtually
[20] always is also contact between various members of the
[21] public and commission officials in accordance with
[22] the Commission's ex parte rules and the

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[1] Administrative Procedures Act. There are sometimes a
[2] wide variety of additional measures, including the
[3] release of supplementary notices of proposed
[4] rulemaking. There can be partial report and orders
[5] and there — further notices of proposed rulemaking.
[6] There can be information requests. There can be
[7] additional ex parte written submissions done by
[8] various — by anybody is free to do so. Sometimes
[9] these are accompanied by motions for leave to file
[10] out of turn. The Commission can and has in many
[11] cases scheduled additional rounds of comment for a
[12] number of different reasons.

[13] Q: Is the comment period important?

[14] MR. BENNETT: Object to the form of the
[15] question.

[16] THE WITNESS: I'm not sure what you mean by
[17] "important." It is mandated by the Administrative
[18] Procedures Act except in certain very limited
[19] exceptions.

[20] BY MR. TILLERY:

[21] Q: Well, is it important ultimately to the
[22] action that the FCC takes?

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[1] A: It depends on the case. It can be and it
[2] may not be.

[3] Q: Was it in this case in the period of time
[4] that you are referencing?

[5] A: The specific comment period?

[6] Q: Yes. Right.

[7] A: It — it had, I would say, minimal
[8] importance.

[9] Q: And why do you say that, sir?

[10] A: Because prior to the comment period, the —
[11] the FCC had decided pretty much what it wanted to do
[12] here and had, after discussions with AT&T,
[13] received — indicated to AT&T that the way they would
[14] like to proceed would be for AT&T to file a specific
[15] proposal, which would not, strictly speaking, be
[16] voted only up or down but which represented the FCC's
[17] view of how it wanted to proceed, and which was
[18] certainly subject to comment, but in contrast to a
[19] case in which the FCC says, "We want to act here,
[20] please give us ideas or suggestions," in which the
[21] proposals may be developed in the comments
[22] themselves, here it was developed prior to that.

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[1] Q: So the action that the FCC was going to
[2] take had been developed prior to the comment period?

[3] MR. BENNETT: Objection —

[4] THE WITNESS: Proposing to —

[5] MR. BENNETT: Object to the form of the
[6] question because I think it may simplify or misstate
[7] his prior testimony. Subject to that objection, the
[8] witness may answer.

[9] THE WITNESS: But the answer is that the
[10] proposal that was contained there specifically
[11] referenced the — the filing that was made and that
[12] earlier in a computer to the Commission had examined
[13] a range of different options for implementation here,
[14] but the FCC prior to the comment period itself had
[15] developed a view of what was going to be the most
[16] appropriate way, they thought, subject to the
[17] comments.

[18] BY MR. TILLERY:

[19] Q: Well, subject to the comments. So the FCC
[20] did take the comments into account?

[21] A: I — yes. The answer is I think I said
[22] before is that there was a minimal importance to it

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[1] MR. KING: We are back on the record at
[2] 10:28.

[3] BY MR. TILLERY:

[4] Q: Mr. Halprin, we have been, over the last
[5] several minutes and during the break, trying to
[6] identify the gap in the documents and you believe
[7] that gap in the documents is made up of the group
[8] of — of exhibits or primarily from the group of
[9] exhibits that we will now mark as exhibit —
[10] Plaintiff's Exhibit Number 1.

[11] MR. TILLERY: If you could, attach a
[12] sticker, please.

[13] (Plaintiffs' Exhibit 1 identified.)

[14] THE WITNESS: I'm not sure. I tried to
[15] look through it, also, during the break and I think
[16] what Mr. Bennett is looking for is that the — some
[17] materials that were ready and filed in the case,
[18] notably the expert report of Charlotte Turkurst and
[19] the depositions of Ms. Turkurst and two named Kahn
[20] and Cameron, just the depositions, not expert reports
[21] I didn't see listed and I have — I don't know how
[22] many numbers are missing but those are the only

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[1] things that I could determine that I rely upon, in
[2] part, that I didn't see listed here.

[3] BY MR. TILLERY:

[4] Q: All right. So let's make sure we are
[5] clear. The deposition of Turkurst —

[6] A: Right.

[7] Q: Who else?

[8] A: Kahn and Cameron.

[9] Q: Cameron and Kahn. And their reports or
[10] not?

[11] A: Just the report of Turkurst.

[12] Q: But not her deposition?

[13] A: No. No. Her deposition — three
[14] depositions and then, in addition, the testimony.
[15] I'm sorry. I probably used the word "report." Oh,
[16] it is there.

[17] MR. BENNETT: Yes.

[18] THE WITNESS: Okay. It just wasn't
[19] indexed. That's why some of the material is indexed,
[20] some —

[21] BY MR. TILLERY:

[22] Q: Right.

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[1] A: — is not.

[2] Q: So that material that you just mentioned on
[3] the record —

[4] A: The depositions.

[5] Q: — is there?

[6] A: At least the expert report is. I don't
[7] know if all the depositions are. I'm just not sure.
[8] The depositions in this case that I am referring to.

[9] Q: All right.

[10] MR. BENNETT: What did you mark that
[11] collection, Steve?

[12] MR. TILLERY: One.

[13] BY MR. TILLERY:

[14] Q: Now, can you please identify Exhibit 1,
[15] please?

[16] A: Yes. I assume this is a copy, it looks
[17] like. I can't tell if it is a copy or the original
[18] of the material I just handed to you earlier —

[19] Q: Right.

[20] A: — which is a time line that I asked to
[21] have prepared for me and then a — a list of
[22] paragraphs in a number of documents that I had asked

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[1] my secretary to come up with me in hopes of making
[2] quicker, if I had to go through any of these during
[3] the deposition, so to the best — to the best of my
[4] knowledge, there is — there is no writing here.
[5] Everything here is, except for the specific paragraph
[6] numbers, also in another document that was provided
[7] but —

[8] Q: And what instruction did you give your
[9] office staff in terms of creating the material that's
[10] included in Exhibit 1?

[11] A: The first, I just asked to have a time line
[12] setting forth certain specific dockets, action in
[13] certain specific dockets that I mentioned, the
[14] dockets that are covered there, and the second, I
[15] took — I got a copy of some of the orders, made
[16] check marks next to certain paragraphs or inclusion
[17] marks next to certain language and asked my assistant
[18] to — to type those up on a separate page.

[19] Q: With the inclusion of those documents that
[20] comprise Exhibit 1, is the file that we have
[21] presented here now your entire file?

[22] A: Except for the documents that I just

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[1] MR. BENNETT: Object to the form of the
[2] question.

[3] BY MR. TILLERY:

[4] Q: Have you been basing them on that or any
[5] other complaint?

[6] A: I — I have been basing — I'm trying to
[7] think of what specific opinions I made with respect
[8] to the complaint. Certainly most of the opinions
[9] are — have to do with conduct rather than the
[10] complaint but, yes, I mean I have — I have made
[11] specific — I think I have made some specific
[12] opinions with respect to that complaint.

[13] Q: I think your report references claims.
[14] What I am trying to do is just identify for the
[15] record that it is the third amended complaint which
[16] is on file today that you are basing your opinions
[17] on.

[18] MR. BENNETT: I object to the form of the
[19] question because — on the grounds that it is vague
[20] and ambiguous when you were talk — previously when
[21] you were asking the questions, it was with regard to
[22] reference to the complaint as opposed to claims made

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[1] by others.

[2] BY MR. TILLERY:

[3] Q: Go ahead and answer.

[4] A: It is the one that I turned over to you,
[5] yes, sir.

[6] Q: The third amended complaint?

[7] A: Yes.

[8] Q: No other prior complaint?

[9] A: Correct.

[10] Q: You haven't seen any complaint that is not
[11] in your file?

[12] A: I have no recollection of seeing any
[13] complaint that's not in my file.

[14] Q: And you are not basing any of your opinions
[15] on anything other than the third amended complaint?

[16] MR. BENNETT: Object to the form of the
[17] question.

[18] THE WITNESS: Well, I'm basing lots of my
[19] opinions on things other than the complaint.

[20] BY MR. TILLERY:

[21] Q: Right. Any other complaint other than the
[22] third amended complaint?

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[1] A: I — I don't recall having done so, no.

[2] Q: Okay. Today, right now?

[3] A: No, I do not recall having done so.

[4] Q: All right. What's your understanding of
[5] the claims being made in this litigation by the
[6] plaintiffs?

[7] A: My understanding is that the plaintiffs are
[8] claiming that AT&T engaged — and Lucent, as its
[9] successor, I mean — I would use the words AT&T and
[10] Lucent interchangeably and occasionally one to refer
[11] to the defendants in this case.

[12] Q: All right.

[13] A: This case.

[14] Q: When you are using the word AT&T, unless
[15] you state otherwise, for the record, I'll assume you
[16] are applying it to both defendants. Okay?

[17] A: Sure. With respect to matters in this
[18] complaint, obviously.

[19] Q: Correct.

[20] A: Lucent wasn't formed at many of the
[21] relevant times here, but the — the claim is that
[22] they engaged in a variety of unlawful activities

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[1] causing great harm to a class of plaintiffs who
[2] leased CPE from and after 1986 and that as a result
[3] of that, they caused great damages. The actions that
[4] AT&T engaged in included a failure to disclose,
[5] inaccurate disclosures, excessive pricing,
[6] unconscionable pricing and providing — as providing
[7] different services than they had claimed they were
[8] doing.

[9] Q: What were the unlawful acts? Were those
[10] the ones you just referenced or were there others?

[11] A: I think those were the ones.

[12] Q: You just referenced?

[13] A: Yes.

[14] Q: All right. And you said, "causing great
[15] harm." What do you mean by that?

[16] A: I — my understanding is that we are
[17] talking about a large amount of excessive pricing and
[18] damages being caused as a result of these activities.

[19] Q: Large is sort of like beauty, it is in the
[20] eyes of the beholder. Can you tell me what you mean
[21] by "large"?

[22] A: Multi-multi-millions.

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[1] less than in some other proceedings but even though
[2] this had been looked at extensively for years and in
[3] great depth, it was certainly possible that somebody
[4] could come in with a comment that had not been
[5] thought of before or a matter that had not been
[6] thought of before, which could have influenced the
[7] FCC.

[8] Q: Now, we have identified for the record this
[9] array of documents that have been produced to us and
[10] I think for the record those numbers range from
[11] BHLPO0001 through 03073. That's what our file
[12] reflects, including your last supplement to the
[13] materials approximately a week ago. And you, I
[14] think, with the exceptions you have noted in the
[15] depositions, have told me that that's your entire
[16] file; correct?

[17] A: Yes.

[18] Q: Are those the only documents you have
[19] reviewed in connection with this case?

[20] A: If the word "document" is used in its broad
[21] sense, the answer is no. I have, also, on the
[22] Internet, using my computer, looked at other

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[1] documents, news reports of what took place 20 years
[2] ago. I think that's — I think those are the only
[3] other things that I recall reviewing.

[4] Q: Okay. With the exception of the news
[5] reports you looked at on your computer, are the
[6] documents that have been referenced in the deposition
[7] the total group of documents you have reviewed and
[8] relied upon in this case to formulate your opinions?

[9] A: Certainly they are the ones that I have
[10] relied upon to form my opinions. It is possible that
[11] there were some other ones that I sort of very
[12] quickly reviewed, that is looking to see whether I
[13] thought they were relevant and deciding they were
[14] not.

[15] Q: What I am trying to do is to find out if
[16] there are any documents that you have looked at, you
[17] have reviewed, you have considered and that you have
[18] somehow not included those within this file?

[19] A: Yes, I think there probably are ones that I
[20] didn't think were relevant and just —

[21] Q: Okay. Could you identify what those would
[22] be?

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[1] A: Yes. I asked and had secured for me a
[2] significant number of pleadings that were filed by
[3] different parties, many of which I thought had no
[4] relevance to the case whatsoever.

[5] Q: You want to tell me what those pleadings
[6] are?

[7] A: I —

[8] Q: Pleadings in which case?

[9] A: In 81-893 and in — which is the
[10] implementation proceeding and the Computer II
[11] proceeding, those two proceedings.

[12] Q: Okay. Anything else?

[13] A: No, I don't believe so.

[14] Q: Just for the record again, this group of
[15] documents comprises the entire array of documents
[16] that you are relying upon as a basis for your
[17] opinions in this case?

[18] A: To the best of my knowledge, yes, sir.

[19] Q: All right. Have you reviewed the
[20] plaintiff's complaints in this case?

[21] A: I recall very specifically the third
[22] amended complaint, which is, my understanding is,

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[1] that — the current complaint. I do not recall
[2] earlier complaints. I certainly focused on what I
[3] understood to be the — the complaint, which was
[4] the — the relevant document in this proceeding, the
[5] third amended complaint.

[6] Q: Okay. Can you tell me, is that the one
[7] that is on file?

[8] A: It is the one — I have a copy of it that
[9] was disclosed that I was provided by counsel. I mean
[10] I have not — when you say, "on file," you mean with
[11] the court?

[12] Q: Yes.

[13] A: I have not reviewed the court files so I
[14] don't know.

[15] Q: The representation made to you is that that
[16] third amended complaint is the operative complaint in
[17] the case?

[18] A: Yes, sir.

[19] Q: When you have offered your opinions in this
[20] case, have you been basing your opinions to the
[21] extent that they apply to the complaint to that
[22] complaint?

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[1] Q: You know you have been retained by Lucent?
[2] A: Yes.
[3] Q: How is it that there is a distinction in
[4] retention in your mind?
[5] A: When I was contacted on this case, I
[6] mentioned to counsel that I was viewed, in my
[7] opinion, as being highly adverse to AT&T in a
[8] considerable number of matters and that they might
[9] have qualms about employing me and that that was not
[10] the case with respect to Lucent, and so counsel
[11] informed me that they knew, you know, after they got
[12] back to me not in that discussion but later, and
[13] indicated that Lucent certainly wanted to employ me.
[14] I never had a discussion about whether or not AT&T
[15] was part of it and I don't know anything about how
[16] the entities split costs with — in connection with
[17] what I understand to be a joint defense.
[18] Q: Have you ever had that issue clarified as
[19] to whether you are appearing here technically on
[20] behalf of AT&T, as well?
[21] A: I have never asked about it subsequently to
[22] that and, so, no.

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[1] Q: You indicated that you advised counsel upon
[2] that initial discussion that you had stated things
[3] that were potentially adverse to AT&T. Tell me what
[4] your referencing.
[5] A: I was — I made reference to the fact that
[6] I thought AT&T might well view me as being highly
[7] adverse, that the matters to which I was referring
[8] was significant representation by my firm and in
[9] other years by myself of certain Bell Operating
[10] Companies who were on the opposite side from AT&T on
[11] a great many telecommunications matters, including
[12] long-distance entry, levels of access charges,
[13] structure of access charges, structure of competition
[14] requirements under the Telecommunications Act,
[15] unbundled network elements, in many proceedings
[16] implementing the Telecommunications Act, as well in
[17] which I felt on opposite sides and, in addition, I
[18] had appeared as an expert witness many times in
[19] administrative proceedings on an issue that's called
[20] reciprocal compensation where the — the positions I
[21] was taking were in many of those cases on — directly
[22] on the opposite side from AT&T, in which they were

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[1] arguing on the other side from the side that had
[2] sponsored me.
[3] Q: Well, then, let me see if I can summarize.
[4] Are you stating that because of your representation
[5] of adverse entities in prior litigation or
[6] administrative proceedings, you deemed that AT&T
[7] would regard your involvement as potentially adverse?
[8] MR. BENNETT: Object to the —
[9] THE WITNESS: No.
[10] MR. BENNETT: Well —
[11] BY MR. TILLERY:
[12] Q: Okay. Did you deem that they would think
[13] that you wouldn't speak highly of them? What is it
[14] that you are telling me?
[15] A: That AT&T deemed me to be a very effective
[16] advocate who had hurt their adoption of the position
[17] and might be uncomfortable about employing me.
[18] Q: All right. When were you first contacted
[19] in this litigation?
[20] A: Early December of 2001.
[21] Q: Who contacted you?
[22] A: Jim Bennett.

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[1] Q: Who have you talked to in this case, these
[2] two cases, about this case or met with, any contact
[3] person?
[4] A: I have met with three attorneys from Bryan
[5] Cave, Jim Bennett, Ketrina Bakewell and Lou
[6] Bonacorsi, I have talked with people in my office who
[7] assisted me in preparation of my report and
[8] testimony.
[9] Q: Okay. Would you tell me who those people
[10] are, please?
[11] A: John Alden, James Chasia, C-h-a-s-i-a.
[12] Alden is simple; it is the same as the pilgrim. Do
[13] you want support staff?
[14] Q: No.
[15] A: Okay.
[16] Q: Lawyers?
[17] A: Neither of those are lawyers.
[18] Q: Okay.
[19] A: No lawyers in — actually, I had at least
[20] one informal conversation with Bill Mayer, who is the
[21] Mayer in the office, although to the best of my
[22] knowledge, he billed no time. It wasn't

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[1] Q: All right. And what year was it formed?
[2] A: It was formed in 1992, early 1992.
[3] Q: Okay. All right. What's Freedom
[4] Technologies, Inc.?
[5] A: Freedom Technologies, Inc. is a consulting
[6] business which is collocated with the law firm and
[7] which is both a client of an employer of the law firm
[8] and which — which I also work.
[9] Q: What does that consulting business do?
[10] A: It consults on telecommunications matters,
[11] domestic and international, spectrum matters, some
[12] transactional matters, a lot of international matters
[13] and does a fair amount of international development
[14] work.
[15] Q: Is it a lobbying group, too?
[16] A: No, it is not.
[17] Q: Okay.
[18] A: It is not — best of my knowledge. I
[19] certainly have not done any — I'm pretty sure it's
[20] never filed a lobbying report or been required to do
[21] so.
[22] Q: In the materials that were forwarded to us,

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[1] we have brought all of the materials that we have
[2] been told that you have looked at in this case and I
[3] want to take some time in a few minutes to go over
[4] those materials, but we were provided with two
[5] separate invoices. Have you given more than two
[6] invoices?
[7] A: I think I have probably given — I'm not
[8] sure when the disclosure was made. I believe there
[9] have been three sent over already.
[10] Q: Do you know the amounts that you have
[11] charged so far? I can tell you that the first two
[12] invoices totaled somewhere around 90- to \$100,000.
[13] A: That's about — I believe the invoices
[14] total — there should be another one for about 28- to
[15] 35,000, somewhere in there.
[16] Q: So the total for your time to date is about
[17] 135,000, 130,000?
[18] A: That's been invoiced. There is a little
[19] bit more. The since April time has not been invoiced
[20] but —
[21] Q: And could you tell me generally, and we are
[22] going to, obviously, spend the day going through the

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[1] work that you have done in the case, but could you
[2] lay out for me generally the work that you have done
[3] in this case? First of all, if you wouldn't mind, if
[4] you would tell me what you understand your assignment
[5] initially to have been.
[6] MR. BENNETT: Object to the form of the
[7] question on the grounds that it is compound and the
[8] first question is also vague with regard to the word
[9] "generally."
[10] THE WITNESS: My understanding of the scope
[11] of my assignment was to review materials in this case
[12] and other materials that I believed were relevant and
[13] to render an opinion as to whether certain activities
[14] of AT&T and Lucent, as its successor, were in
[15] accordance with FCC regulations and law and, also, to
[16] render certain opinions with respect to other
[17] opinions rendered by experts in this case.
[18] BY MR. TILLERY:
[19] Q: When you say, "FCC regulations and law" —
[20] A: Yes.
[21] Q: — are you talking about any specific FCC
[22] regulations and law or are you talking about the —

Page 20

[1] all of the FCC regulations and law that could
[2] possibly impact on AT&T? How did you define the
[3] scope of those laws or regulations?
[4] A: All — all FCC regulations and laws that
[5] could possibly affect —
[6] Q: Affect?
[7] A: — affect AT&T with respect to the
[8] activities that — that were referred to in this
[9] case, rather than every AT&T activity.
[10] Q: In other words, from what you understand
[11] the nature of the litigation to include?
[12] A: Yes, from what I reviewed in the materials.
[13] Q: Are you here on behalf of both AT&T and
[14] Lucent?
[15] A: I believe so.
[16] Q: Has that ever been clarified?
[17] A: I — I guess the answer to that is no. I
[18] mean it is not — I am certain that I am appearing on
[19] at least on behalf of Lucent and I am not certain as
[20] to the nature of this with respect to AT&T in terms
[21] of whether they are formally employing me jointly or
[22] the mechanics of that.

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[1] A: I was at the FCC when the implementation
[2] order — the report and order was under
[3] consideration. I was not there when it was adopted.
[4] Q: When was it under consideration?
[5] A: It was under consideration for, I guess,
[6] beginning — it was actually under consideration from
[7] the time that the consent decree was announced but it
[8] was under active work, including the preparation of
[9] the notice of proposed rulemaking and the negotiation
[10] with AT&T of the plan that they would propose, which
[11] became the basis of the implementation order, which
[12] was approved in the implementation order, I would say
[13] from late 1982, probably, about August or September
[14] 1982 until the time that it was actually adopted.
[15] Q: August or September of '82 —
[16] A: Yes.
[17] Q: — is when it was under consideration?
[18] A: Active consideration, yes. It was under
[19] some consideration from within a matter of days after
[20] the announcement of signing the consent decree.
[21] Q: And your consulting work, then, started in
[22] what, the month of July for AT&T?

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[1] A: Either July or August.
[2] Q: And it lasted until when?
[3] A: It lasted until, I would say, August of
[4] 1984.
[5] Q: And when did you go back to the FCC?
[6] A: I went back to the FCC in late September
[7] '84.
[8] Q: Okay. So after the consulting work was
[9] done with AT&T, a month later, you went back to the
[10] FCC?
[11] A: Yes.
[12] Q: Did you consult with any other companies in
[13] that hiatus from '83 to '84?
[14] A: Yes, I did.
[15] Q: Which other companies?
[16] A: The — there were a fair number. Northern
[17] Telecom was a major client, Cable and Wireless was a
[18] major client, Ameritech was a major client. Those
[19] were probably the three other major clients.
[20] Q: In that period of time from July of '83
[21] into September of '84?
[22] A: Yes.

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[1] Q: Okay. When you went back in September of
[2] 1984, what was your job then?
[3] A: I was chief of the common carrier bureau of
[4] the FCC.
[5] Q: And your responsibility, please?
[6] A: I was responsible for all staff matters
[7] involving domestic and international
[8] telecommunications, most wireless communication,
[9] satellite communications, telephone, telegraph,
[10] cellular.
[11] Q: And you were there until, you said, midyear
[12] of '87?
[13] A: That's correct.
[14] Q: And when you left in '87, what did you do?
[15] A: I joined a law firm, Dewey Ballantine.
[16] Q: And how long were you at that firm?
[17] A: About 18 months.
[18] Q: And then where did you go?
[19] A: I joined another law firm called Myerson,
[20] Kuhn & Sterrett.
[21] Q: And how long were you there?
[22] A: I was there — I think I probably formally—

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[1] resigned in about five months.
[2] Q: Okay. Then where did you go?
[3] A: Then I went to another law firm.
[4] Q: What was the name of that firm?
[5] A: Verner, Liipfert, MacPherson & Hand.
[6] Q: Okay. And how long were you there?
[7] A: I was there about 18 months, between 18
[8] months and two years.
[9] Q: Okay. Were you a partner at any of these
[10] firms?
[11] A: I was a partner in all of those firms.
[12] Q: Okay. And how long did — strike that.
[13] Where did you go after the third firm you
[14] have told me about?
[15] A: After that, I founded a firm with a number
[16] of friends. It's gone through a variety of changes
[17] depending on who the named partners have been but
[18] it's been the same firm and I have been a named
[19] partner in it since that time.
[20] Q: And what's — and that's the firm that you
[21] have identified on the record?
[22] A: Yes, sir.

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[1] Q: Have you ever worked for AT&T?
[2] A: Not as a lawyer. In a previous occupation,
[3] I did consulting for them.
[4] Q: Why don't you tell me about that.
[5] A: I was with a — two consulting firms. It
[6] was actually the same one changing personnel, one
[7] called Kestenbaum & Halprin and one called Albert P.
[8] Halprin Associates, Inc., which in 1983 and 1984, I
[9] worked with and did consulting for AT&T.
[10] Q: What kind of consulting in '83 and '84?
[11] A: I call it regulatory strategic consulting.
[12] It was advising AT&T in connection with a number of
[13] FCC dockets, most notably one that was called the
[14] long-range regulation docket.
[15] Q: Okay. Tell me what you were advising
[16] them. What was the scope of that consulting
[17] assignment?
[18] A: It was to help them develop approaches to
[19] propose to the FCC and also to build coalitions with
[20] other people that would enable the FCC in a docket
[21] that the FCC had opened on its own accord to
[22] significantly reduce the regulation of some of AT&T's

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[1] services.
[2] Q: What was your full-time employment at that
[3] time in 1983 and 1984?
[4] A: During those — those periods, I was either
[5] employed by Kestenbaum & Halprin, I mean technically
[6] I was a partner in that, or Albert P. Halprin
[7] Associates, Inc.
[8] Q: What was your first date of employment with
[9] the FCC?
[10] A: It was in the middle of 1980.
[11] Q: And how long did you work at the FCC?
[12] A: I had two terms of employment at the FCC,
[13] separated by this consulting period of time. I
[14] worked at the FCC from 19 — mid 1980 until mid 1983,
[15] took off — went into the private sector and then was
[16] requested to come back and came back and rejoined the
[17] FCC. I believe it was the very end of September
[18] 1984. And then at that point stayed there through
[19] the middle of 1987.
[20] Q: When did you — strike that.
[21] When did you get your law degree?
[22] A: 1974.

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[1] Q: What was your first employment
[2] responsibility in mid 1980 at the FCC?
[3] A: I was employed as a — a senior attorney
[4] adviser in what was called the policy and program
[5] planning division of the common carrier bureau and my
[6] first assignments there were a cost allocation
[7] docket, 79-245, the — the Computer II
[8] reconsideration docket, a related case called
[9] Oklahoma Corporation Commission that also involved
[10] deregulation of CPE, and within a matter of — of
[11] several weeks after I was there, I was also assigned
[12] to what was called the joint board docket, which was
[13] 82-86 and had to do with jurisdictional separations.
[14] Q: What did you do from 1980 until you left in
[15] I think you told me the fall of 1983 or mid '83?
[16] A: Well, first, I was a senior attorney
[17] adviser and then I was later promoted to the acting
[18] chief and then chief of the policy and program
[19] planning division. As a senior attorney adviser, I
[20] both drafted orders and supervised more junior
[21] attorneys drafting orders, met with individuals from
[22] industry, from consumer groups, from others who

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[1] wanted to come in and talk about the dockets, part of
[2] the fact gathering and opinion gathering operation.
[3] After I was promoted to be acting chief and chief of
[4] the division, I did less direct drafting. I
[5] continued to edit and supervise and had
[6] administrative responsibilities, as well.
[7] Q: And you left there what month in '83?
[8] A: I believe it was late June or early July.
[9] Q: And when did you start your consulting work
[10] for AT&T?
[11] A: It would have been probably about three
[12] weeks thereafter.
[13] Q: Had you made arrangements to initiate your
[14] consulting work while you were still at the FCC?
[15] A: No.
[16] Q: So you left, starting a consulting firm and
[17] had your first assignment with AT&T in three weeks?
[18] A: I would guess that was about as long as it
[19] took for them to employ us. We got most of our
[20] clients within that first month, three-week period.
[21] Q: Were you at the FCC when the implementation
[22] order was under consideration and adopted?

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[1] was called as a witness and, having first been duly
[2] sworn, was examined and testified as follows:

[3] MR. BENNETT: Defendants object to the
[4] videotaping on the grounds that Mr. King is not a
[5] proper operator under the Illinois rules.

[6] EXAMINATION

[7] BY MR. TILLERY:

[8] Q: Would you state your name for the record,
[9] please?

[10] A: Albert Halprin.

[11] Q: What is the name of your law firm?

[12] A: Halprin, Temple, Goodman & Mayer.

[13] Q: What is your professional address, sir?

[14] A: 555 12th Street Northwest, Washington,
[15] D.C., Suite 950.

[16] Q: And what is your personal address, home
[17] address?

[18] A: 1340 Potomac School Road, McLean, Virginia
[19] 22101.

[20] Q: Is your educational background accurately
[21] set out in the CV that's attached to your report?

[22] A: Yes, it is.

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[1] Q: Is there any other legal education or any
[2] other specific education germane to the issues raised
[3] in this case that you are aware of that's not
[4] included in the CV?

[5] MR. BENNETT: Objection to the form.

[6] THE WITNESS: I don't believe so.

[7] BY MR. TILLERY:

[8] Q: Have you ever testified in a court
[9] proceeding before?

[10] A: I have.

[11] Q: How many times?

[12] A: I would guess about three or four.

[13] Q: "Court proceeding" meaning — I guess I'm
[14] distinguishing that from an administrative type
[15] proceeding where I have seen that set out in — in
[16] your CV.

[17] A: Yes.

[18] Q: Give me the names of the three or four
[19] cases where you think you have testified.

[20] A: I'm not sure about the case names. And by
[21] "testified," I took it to mean you included
[22] depositions.

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[1] Q: Actually, no, I saw the depositions that
[2] you have given. I meant to mean where you appeared
[3] in a courtroom, adversarial proceeding, and
[4] testified.

[5] A: I believe there were two.

[6] Q: All right.

[7] A: I don't know the names, the designations.

[8] One was a satellite matter that took place in — many
[9] years ago in Alexandria, Virginia, and the second was
[10] a matter involving cellular licenses, and believe it
[11] was in Oklahoma but —

[12] Q: When was the cellular license litigation?

[13] A: I would guess about eight years ago, 10
[14] years ago.

[15] Q: By whom were you employed?

[16] A: The — in that, I was employed — it was a
[17] family trust that had been involved in cellular
[18] licenses. I'm just — I can't even remember the name
[19] of the people.

[20] Q: And what was the nature of your testimony?

[21] A: It had to do with licensing procedures and
[22] whether or not certain application transfers were in

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[1] accordance with FCC rules and regulations.

[2] Q: And what was the nature of your testimony?

[3] A: To offer an opinion on whether or not that
[4] was — the license transfers and other activities
[5] were in accordance with FCC rules and regulations.

[6] Q: And what did you say?

[7] A: I can't remember.

[8] Q: In the other case that you have identified
[9] in Virginia, what was the nature of your retention,
[10] the scope of your retention?

[11] A: It was whether or not a contract that was
[12] entered into for the provision of certain technical
[13] services in connection with filing a license
[14] application violated FCC rules on transfer of
[15] control.

[16] Q: What did you say?

[17] A: That the — that the retention and
[18] activities that were performed thereunder did not
[19] violate FCC transfer control rules.

[20] Q: Have you ever worked for Lucent
[21] Technologies?

[22] A: No, I have not.

Page 1

[1] IN THE CIRCUIT COURT
[2] THIRD JUDICIAL CIRCUIT
[3] MADISON COUNTY, ILLINOIS
[4]
[5] CHARLES SPARKS and MARGARET LITTLE, : Case No.
[6] individually and on behalf of all : 96-LM-983
[7] others similarly situated, :
[8] Plaintiffs, : DEPOSITION OF
[9] v. : ALBERT HALPRIN
[10] AT&T CORPORATION, : April 8, 2002
[11] Defendant. : Washington, DC
[12]
[13] - and -
[14]
[15] CHARLES SPARKS and MARGARET LITTLE, :
[16] individually and on behalf of all :
[17] others similarly situated, :
[18] Plaintiffs, : Case No.
[19] v. : 01-L-1668
[20] LUCENT TECHNOLOGIES, INC., :
[21] Defendant. :
[22]

Page 2

[1] Deposition of ALBERT HALPRIN, called for
[2] examination pursuant to notice of deposition, on
[3] Monday, April 8, 2002, in Washington, DC, at the law
[4] offices of Bryan Cave, LLP, 700 13th Street NW, 6th
[5] Floor, at 9:40 a.m., before VICTORIA L. WILSON, a
[6] Notary Public within and for the District of
[7] Columbia, when were present on behalf of the
[8] respective parties:
[9] STEPHEN M. TILLERY, ESQ.
[10] Carr, Korein, Tillery, Kunin, Montroy,
[11] Cates, Katz & Glass
[12] 10 Executive Woods Court
[13] Swansea, Illinois 62226
[14] 618-277-1180
[15]
[16] ROBERT KING, ESQ.
[17] Carr, Korein, Tillery, Kunin, Montroy,
[18] Cates, Katz & Glass
[19] 701 Market Street, Suite 300
[20] St. Louis, Missouri 63101
[21] On behalf of the Plaintiffs
[22] —continued—

Page 3

[1] APPEARANCES (CONTINUED):
[2]
[3] RODNEY L. JOYCE, ESQ.
[4] Shook, Hardy & Bacon, LLP
[5] Hamilton Square
[6] 600 14th Street NW, Suite 800
[7] Washington, DC 20005-2004
[8] 202-783-8400
[9] On behalf of the Plaintiffs
[10]
[11] JAMES F. BENNETT, ESQ.
[12] Bryan Cave, LLP
[13] One Metropolitan Square
[14] 211 North Broadway, Suite 3600
[15] St. Louis, Missouri 63102-2750
[16] 314-259-2067
[17] On behalf of the Defendants
[18]
[19]
[20]
[21]
[22]

Page 4

PROCEEDINGS

[1]
[2] MR. KING: My name is Robert King. My
[3] address is 701 Market Street, Suite 300, St. Louis,
[4] Missouri 63101. The date is April the 8th, 2002. We
[5] are at the Washington, D.C. offices of Bryan Cave and
[6] the time is 9:40, in the cases of Sparks and Little
[7] versus AT&T Corporation, Cause Number 96-LM-983, and
[8] Sparks and Little versus Lucent Technologies, Inc.,
[9] Cause Number 01-L-1668.
[10] The name of the witness this morning is
[11] Albert Halprin. The deposition is being taken on
[12] behalf of the Plaintiffs and being videotaped at the
[13] request of the Plaintiffs.
[14] And I would ask the court reporter to
[15] identify herself.
[16] THE REPORTER: My name is Vicky Wilson with
[17] the reporting company of Acc-Federal Reporters, 1120
[18] G Street NW, Washington, DC.
[19] MR. KING: Would you please swear the
[20] witness.
[21] Whereupon,
[22] ALBERT HALPRIN

In The Matter Of:

*Charles Sparks v.
Lucent Technologies, Inc.*

*Albert Halprin
April 8, 2002*

*McCorkle Court Reporters, Inc.
200 North LaSalle Street
Suite: 300
Chicago, IL U.S.A. 60601
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Word Index included with this Min-U-Script®

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[1] sure 100 percent on what but I haven't spoken to him
[2] nor have I seen any documents. I —
[3] Q: Are there any documents that you have
[4] looked at, considered, relied on, and for reasons —
[5] for one reason or another not placed in this group of
[6] documents?
[7] A: No, not documents. I mean the — I — the
[8] one thing that I —
[9] Q: I'm just talking about documents now.
[10] A: Well, we are excluding things like
[11] newspaper articles that I read, you know, in the
[12] course of that.
[13] Q: Right.
[14] A: And Internet pages that I read.
[15] Q: Right.
[16] A: Yes. No. The answer is no, there aren't.
[17] Q: Everything that you have relied on is here?
[18] MR. BENNETT: You mentioned earlier the
[19] depositions.
[20] THE WITNESS: Yes, with those things. I
[21] mean I — I had requested — I take full
[22] responsibility for it. There was some garble in

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[1] communication with going through this. We were under
[2] the impression that everything that had been provided
[3] to me by Bryan Cave had been submitted and that's how
[4] those other things got omitted.
[5] BY MR. TILLERY:
[6] Q: So were there things submitted to you by
[7] Bryan Cave that you —
[8] A: The ones I mentioned this morning, the
[9] specific depositions.
[10] Q: Right.
[11] A: That's the only thing that — that I'm
[12] aware of when I look through there.
[13] Q: But you relied on those depositions?
[14] A: The depositions of Ms. Turkurst.
[15] Q: Kahn and Cameron.
[16] A: In — in coming up with these opinions?
[17] Certainly the Turkurst one, yes. Kahn and Cameron,
[18] I'm trying to think if there is anything I say here
[19] specifically that relies upon them. I mean I looked
[20] at them, I have significant disagreements with them,
[21] and on some of them I know I have talked with counsel
[22] and I — I had thought they had been turned over

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[1] initially and I believe they should be turned over.
[2] I would say yes, there is material where I have
[3] relied upon them.
[4] Q: Are your opinions set out in your report
[5] that you are offering at trial?
[6] A: Yes. I mean I —
[7] Q: Do you have opinions that you haven't told
[8] me about today that are otherwise not contained in
[9] your report about this case?
[10] A: The only hesitation I have here is when you
[11] say, "contained." There is nothing which is — is
[12] not fully covered or necessarily implied by this.
[13] There may be individual examples in the same way —
[14] when you asked me a question, I may try and respond
[15] with a certain type of example, and the report itself
[16] does not include every example of this. I mean one
[17] of the —
[18] Q: With that — with that caveat —
[19] A: With the caveat —
[20] Q: — have you fairly and disclosed your
[21] opinions in your report?
[22] A: I have done my best to do so and I believe

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[1] I have.
[2] Q: What I am trying to find out is if you are
[3] going to show up in August when you testify or
[4] whenever you appear at trial in this case and offer
[5] anything that we can't decipher from this report or
[6] from what you have told us here in this deposition.
[7] A: I understand that and my answer would be
[8] no, and I don't think it is a caveat, and that is
[9] based on what I have told you is my understanding is
[10] that anything which is — is an example of what is —
[11] is here if somebody asked me.
[12] Q: I'm having trouble understanding your
[13] limitation on this.
[14] A: I — when you asked me what this means or
[15] whether I believed this or something like that, I
[16] said, "Yes, let me give you an example." Now, if you
[17] asked me the identical question at trial, "What do
[18] you mean by this?" I might give you a different
[19] example because I don't remember the specific example
[20] and in many of these cases, if you ask me what —
[21] what's wrong with this or that, in my opinion, I
[22] understand you may not agree, there is a huge amount

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[1] wrong with it and I could go through a lot of
[2] individual examples enumerating how it appears. I
[3] would — if you asked me, I believe that is covered
[4] fully in my report.
[5] Q: All right. I understand what you are
[6] saying.
[7] A: Yes.
[8] Q: So you have given me, with that
[9] explanation, you have given me all of your opinions?
[10] A: The —
[11] Q: Is that correct?
[12] A: I'm trying — the one thing I was starting
[13] to say, in addition, that — I don't know if it is —
[14] I think it is. I mean a part of the basis, which
[15] comes from newspapers, I'm assuming that the paper I
[16] was reading on Sunday, which absolutely struck me, I
[17] have a view which I believe I have expressed here,
[18] which is that the — the activities that AT&T engaged
[19] in with respect to its provision of lease CPE are not
[20] unusual with respect to — to equivalent offerings
[21] and the — the most equivalent offering, obviously,
[22] is the offering of other CPE under lease, and there

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[1] was an article in the paper on Sunday, yesterday,
[2] talking — it was the same type of thing, saying,
[3] "Hey, guys, it makes a heck of a lot more sense to
[4] buy the CPE" — it happened to be a modem — "to buy
[5] the CPE rather than lease it, and God knows I have
[6] gone through personal experience, where I actually,
[7] in the year 2001, paid a lease for CPE because the
[8] company didn't go one-tenth as far as AT&T went here
[9] to tell me what my options are to make it easy for me
[10] to drop out. So that, as I said, was in the paper I
[11] read yesterday and I think it is a — a good example
[12] but that was the one other matter that — because it
[13] has come up since I filed this and I don't have
[14] documents on it, that I probably mentioned.
[15] Q: Anything else?
[16] A: Not that I can think of.
[17] MR. TILLERY: No further questions.
[18] MR. BENNETT: We don't have any cross. And
[19] we will review the transcript.
[20] (Whereupon, at 6:33 p.m., the deposition
[21] was concluded.)
[22]

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[1] I HEREBY CERTIFY that I have read this
[2] transcript of my deposition and that this transcript
[3] accurately states the testimony given by me, with the
[4] changes or corrections, if any, as noted.
[5]
[6]
[7] X
[8]
[9]
[10]

[11] Subscribed and sworn to before me this day of
[12] , 20 .
[13]
[14]
[15]
[16] X
[17] Notary Public
[18]
[19] My commission expires: .
[20]
[21]
[22]

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[1]	CONTENTS	
[2]		
[3]	WITNESS	EXAMINATION
[4]	ALBERT HALPRIN	
[5]	by Mr. Tillery	5
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[7]	EXHIBITS	
[8]		
[9]	EXHIBIT NUMBER	IDENTIFIED
[10]		
[11]	Exhibit 1 - Documents constituting gap	
[12]	in documents	33
[13]	Exhibit 2 - Memorandum of FCC	113
[14]	Exhibit 1A - Bales numbered documents	
[15]	BHLP02253-02291	360
[16]		
[17]		
[18]		
[19]		
[20]		
[21]		
[22]		

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[1] yourself working, separate from your staff members?
[2] A: I — perhaps I should have. I haven't
[3] actually reviewed that but — but I guess 160, 180.
[4] Q: Hours you have?
[5] A: Yes.
[6] Q: Tell me where you have spent that time.
[7] A: Mostly document review. There are an awful
[8] lot of documents. I went through them in a number of
[9] cases, quite a few cases, actually, since this is the
[10] third date I have had for the deposition, I — I mean
[11] I have told this to counsel, I feel bad about it, but
[12] I have prepped for deposition three separate times
[13] and so I have — I have gone through it several times
[14] but the — in addition to that, other time was spent
[15] going through the Internet trying to find things,
[16] doing different searches, trying to figure out how —
[17] I mean I tried very, very hard and ultimately without
[18] success to find specific documentation on the
[19] 10-figure write-down that AT&T took of the embedded
[20] CPE that I remember from when I was there and none of
[21] the journals that I can find and I could not find any
[22] specific reports that went through all of the details

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[1] of that, although I — you know, without every
[2] detail, I mean I well remember discussing with them
[3] and with the accounting people who worked for me
[4] there, there were a lot of details there. This was
[5] AT&T wanted to be able to get an amortization
[6] schedule for some portion of the CPE because we made
[7] them buy it at more than it was worth.
[8] Q: Why did you do that, by the way?
[9] A: Because —
[10] Q: Why did you make them buy it at more than
[11] it was worth?
[12] A: For — it was deemed to be a fair
[13] compromise, political compromise, because every penny
[14] that they spent, you know, in the context of
[15] accepting the transfer of it, went to reduce local
[16] rates, and as I said earlier —
[17] Q: Went to reduce local rates?
[18] A: Yes.
[19] Q: Explain that, how that happened.
[20] A: Okay. The — the money — the level of
[21] valuation of this equipment was taken out of the rate
[22] base of the local telephone companies. And at the

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[1] same time, they were getting a special amortization
[2] schedule under what I referred to earlier as the
[3] Pompano plan, that recognized the fact that even —
[4] that — they were — that CPE had been used as a
[5] subsidy mechanism because of the fact that 25 percent
[6] of the cost of the CPE had been assigned to the
[7] interstate jurisdiction and didn't have to be
[8] recovered through CPE prices and we were very
[9] concerned about local rates so we gave it to them.
[10] So the higher the price that AT&T paid for this
[11] equipment to the old Bell system prior to
[12] divestiture, the lower the local rights that every
[13] rate payer would pay from that date forward, and in
[14] the context of what was taking place at this time,
[15] which was both the divestiture and the first-time
[16] introduction of what were called access charges, even
[17] though ultimately they were postponed a couple years
[18] because of exactly the political pressure I am
[19] talking about, there was an exceedingly strong
[20] political imperative to keep local rates down. We
[21] had a number of things that are referred to here and
[22] include the Michigan study. A great deal of focus on

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[1] local rates. And so from our perspective, it was
[2] very desirable to get AT&T to pay as much as possible
[3] for this. Additionally, because of, I would say, our
[4] absolutely strong beliefs in consumer protection and
[5] to — to really try and — as quickly as possible,
[6] consistent with the decisions we made before, get
[7] away from the lease business, we gave people an
[8] option to buy the equipment at an average price,
[9] recognizing that with all of this equipment which
[10] fell across the entire range of age and condition, if
[11] I give people a chance to buy it at an average price,
[12] rational people will buy one heck of a lot more of
[13] the top-valued equipment and choose not to buy one
[14] heck of a lot more of the low-value equipment, so
[15] while this was a decision that was very strongly
[16] influenced by our desire to introduce competition on
[17] a full and complete basis in the CPE market and to
[18] sort of break out of the degree of competition we had
[19] limited by below-cost pricing and the state
[20] regulation, which we thought was in the long-term
[21] interest of the public, we also thought that it was
[22] important to enhance it with some additional measures

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[1] that were in the short-term interest of the public.
[2] I'm, just by example of this, if I would mention the
[3] first Computer II order actually contained within it
[4] a specific requirement that AT&T could never raise
[5] the price on this equipment and, moreover, even if
[6] they were now being forced to sell this equipment at
[7] a big loss, they could never raise the price of local
[8] rates to make up for it. Not surprisingly, after
[9] this order came out, AT&T and other carriers all came
[10] in and said this is patently confiscatory,
[11] unconstitutional, unlawful, and by the time I got
[12] there, on reconsideration, there was a universal
[13] belief upon the staff that they were absolutely
[14] right, it was blatantly unlawful. It was referred to
[15] as the Charlie's grandmother provision because he had
[16] told people who had told him at the time that it was
[17] unconstitutional and confiscatory that he didn't
[18] care; if he didn't put it in, his grandmother would
[19] never speak to him again. So local rate issues
[20] always tempered the greater or lesser and more or
[21] less constitutional and lawful degrees, the
[22] procompetitive measures of the FCC.

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[1] Q: Who is Charlie?
[2] A: He was Commissioner Charles Farris, who was
[3] the predecessor as chairman of the Federal
[4] Communications Commission prior to — to Mark Fowler,
[5] who I worked for in most of my career there.
[6] Mr. Farris was, I think it is fair to say, a liberal
[7] democrat who — for whom introducing full competition
[8] into the CPE market was about the only
[9] market-oriented — and the enhances services,
[10] deserves a lot of credit for that. This was the
[11] single big deregulatory initiative that he did.
[12] Chairman Fowler, in contrast, believed strongly in
[13] pushing deregulation and the expansion of markets
[14] into as many areas of communications as possible in
[15] the belief that that was ultimately the best way to
[16] serve the public interest and I strongly agree
[17] with — with the latter, of course.
[18] Q: Have you spoken to any employees of AT&T or
[19] Lucent in connection with this case?
[20] A: No, I have not.
[21] Q: Have you spoken to any other of AT&T and
[22] Lucent's experts?

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[1] A: No. That's the case, no. And, actually,
[2] since I have become aware of this case, I don't think
[3] about anything to the best of my knowledge. I can't
[4] tell you I know who all of their experts are.
[5] Q: Do you know of any of them?
[6] A: I know of three that I think have been
[7] mentioned to me.
[8] Q: Who?
[9] A: George Moreland, I believe, Dan Kulkin, and
[10] Sandy Lavin.
[11] Q: Do you know those men?
[12] A: I know those three people, yes.
[13] Q: How do you know Sandy Lavin?
[14] A: Sandy I know from when he was commissioner
[15] on the Illinois Commission back in the mid eighties
[16] and have run into him at conferences and other
[17] things, you know, I mean he is — he is a friend. I
[18] like him. The Illinois Commission, I had mentioned
[19] earlier that the FCC during this period was to some
[20] extent at war with state commissions who were very
[21] anticompetitive and wanting to just subsidize. The
[22] Illinois Commission was certainly the most and in

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[1] many respects the only state commission that thought
[2] the FCC was 100 percent right on, so not
[3] surprisingly, we became friends. You didn't get that
[4] much positive feedback in those days about what you
[5] were doing from state commissioners so that's —
[6] that's where I know him from.
[7] Q: Do you know any of the other experts for
[8] AT&T, the retained experts?
[9] A: I'm trying to think. I don't think I know
[10] who any of the others are.
[11] Q: Have you been given copies of any reports to
[12] read that have been authored by anybody else?
[13] A: No, not those — or — any AT&T, I mean I
[14] listed the ones of your experts but no.
[15] Q: Do you know Mr. Wiley or Mr. Butler?
[16] A: I know Mr. Wiley, yes, I mean I haven't
[17] seen him for a while.
[18] Q: Do you know he is an expert in this case?
[19] A: Now that you mention it, I do, but I
[20] haven't seen a report by him. I had forgotten that.
[21] Originally, it was mentioned to me, I guess, the
[22] first day that — that he was there. I'm not even

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[1] would think that would not be preempted, that's
[2] correct.

[3] Q: Exhibit BHLF 1 through 48 is your report
[4] and attachments of your CV and document list; right?

[5] A: You have the — yes, I believe so. I only
[6] have my — the report itself here and that's — I'm
[7] just sure it is, yes. Yes.

[8] Q: Now, with reference to the other documents
[9] in your file, have you relied on every document
[10] that's in this file that's marked?

[11] A: No, I have not.

[12] Q: Are there groupings of documents that you
[13] can tell me that you have not relied upon or is it
[14] essential that we go through every page to identify
[15] that which you have or have not relied upon?

[16] A: Partly because I handed this over and asked
[17] somebody to make a list of everything I have been
[18] provided and then asked counsel to turn it over,
[19] there are a mammoth number of these documents that
[20] are connected with the FTC, FCC discussions incident
[21] response to complaints that you refer to —

[22] Q: Right.

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[1] A: — which I — I don't think I have relied
[2] on any of them at all.

[3] Q: Can you be more specific about that which
[4] you are not relying on? I'm trying to narrow this
[5] down. Mr. King looks like he is up to about 16
[6] inches of material if you stack all that together and
[7] I'm just wondering if we can narrow down that which
[8] you have and have not relied on.

[9] A: Number 60 here, which appears to be all of
[10] this and which constitutes more than half of the
[11] pages of this, is what I am referring to.

[12] Q: Number 60?

[13] A: Item 60, beginning on page 6 of the
[14] document list. I think this tells us this is all
[15] that — all the documents I — my staff tried to be
[16] very responsible here when I said list it. When I
[17] saw this after — I said, "Geez, you might have just
[18] wanted to say, 'miscellaneous correspondence,' and
[19] see if anybody asked for a" —

[20] Q: All right. Let's go, then, if we can, to
[21] the record here. BHLF000038 has a notation that
[22] says, "60 AT&T Systems, Inc., correspondence," and

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[1] then it has bullet points.

[2] A: Yes.

[3] Q: Right?

[4] A: Yes.

[5] Q: All right. Have you relied on all of that
[6] material or not?

[7] A: No, that's — what — I'm just saying, this
[8] material, I can tell you each and every one of these
[9] is part of a very large file that was provided to me
[10] by counsel relating to the — the 1995 activities —

[11] Q: Right.

[12] A: — which I have not relied upon.

[13] Q: So from 60 on, which is the rest of page
[14] 38, all of 39, all of 40 —

[15] A: Through the end. It is more than half.

[16] Q: — through 48, page 48, you have not relied
[17] on those materials?

[18] A: That's correct.

[19] Q: All right. What else have you not relied
[20] upon looking at your document list, which starts on
[21] page 33?

[22] A: I — I have not relied on the details of

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[1] number 24 through number 31. Those are there. What
[2] I do rely on, I'm not — you know —

[3] Q: When you say, "the details of 24" —

[4] A: That's what I am trying explain. I'm
[5] trying to be responsive to this.

[6] Q: All right.

[7] A: I rely upon the fact that the FCC,
[8] throughout this period, monitored, cared about the
[9] progress of CPE deregulation and required AT&T to
[10] make these reports and I recall that they were made
[11] and I believe I asked counsel to see if they could
[12] come up with some of them for me. The specific facts
[13] in there are — are not specific facts that I relied
[14] upon but the fact that the FCC required, as part of a
[15] whole program of careful monitoring of this
[16] transition period to ensure that the decisions that
[17] it made in the implementation proceeding were working
[18] out, so I rely on the existence of such reports
[19] rather than — by details, I mean the specific
[20] substance of any one of these reports versus
[21] another. I think — I could have — I'm not sure. I
[22] mean my understanding is I was supposed to disclose

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[1] to you all the documents, you know, that they had
[2] given me and things so that that's — I'm — is
[3] that — does that explain what I mean by details
[4] rather than existence of the reports?

[5] Q: All right. Anything else that you are not
[6] relying on?

[7] A: I don't think — I am not — I think it was
[8] here because it was — I stuck it with the file. I
[9] think I may have given it to counsel. I don't rely
[10] on the Darcey Ting case, T-i-n-g, number 36.

[11] Q: Okay.

[12] A: And I — I — let me say that I am not 100
[13] percent sure of why it is here but the one other that
[14] I'm not sure that I rely upon, if we have it, maybe I
[15] can look at it, it is number 23, which is the
[16] International Communications Association petition for
[17] emergency relief.

[18] Q: What is it in that that you would rely on?

[19] A: Once again, this is a complaint that was
[20] brought to the FCC, not involving residential CPE but
[21] business CPE, multi-line CPE, during the transition
[22] period and I rely upon it, once again, for the fact

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[1] that people were free and, in fact, did come in
[2] invoking FCC jurisdiction saying somebody is not
[3] doing something right and the FCC dealt with it.

[4] Q: During the transition period?

[5] A: That — that is what that was —

[6] Q: Has anybody taken any action after the
[7] transition period involving CPE at any time where the
[8] FCC has made a rule, has ruled on their request?

[9] MR. BENNETT: I object to the form of the
[10] question.

[11] THE WITNESS: I am not aware of anything.
[12] I'm not aware of any order requiring, again, anything
[13] of that type that was issued subsequent to January
[14] 1st of '86.

BY MR. TILLERY:

[15] Q: Has anybody asked the FCC to make — to
[16] consider some rulemaking after January 1, '86, other
[17] than the defendants in this case?

[18] A: I'm not aware of any.

[19] Q: Okay. Keep going. Is there any other
[20] document —

[21] A: Those are the only documents —

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[1] Q: Everything else is fair game. You are
[2] relying on it, right?

[3] A: I think so. That was a report. It said
[4] assessment.

[5] MR. BENNETT: Let me just clarify.

[6] THE WITNESS: That was one that I had
[7] referred to earlier which Mr. Bennett said was, in
[8] fact — that's the report of Ms. Turkurst and I now
[9] see it. I was looking through here for this.

[10] MR. BENNETT: You see it on the list of
[11] documents?

[12] THE WITNESS: Yes. Yes. And you had
[13] earlier told me that it was — appeared on the list
[14] of documents. I just see how it is titled.

BY MR. TILLERY:

[15] Q: Just to be complete, we will mark as
[16] Exhibit 1A the pages which have the Bates range from
[17] BHLPO2253 through 02291 as those pages which we
[18] discussed earlier today and these are — this is the
[19] fax version which bears the page reference. Okay?
[20] We will call it 1A just to fill the blank.

[21] MR. BENNETT: And just for the record, it

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[1] looks like you guys did get that but I understand how
[2] things can get mixed up.

[3] (Exhibit 1A identified.)

BY MR. TILLERY:

[4] Q: Now, we have here BHLPO3072, 73, which is
[5] a — apparently a letter from your file — your
[6] office identifying documents which were omitted.

[7] A: Yes.

[8] Q: And it lists those documents?

[9] A: Yes, it does.

[10] Q: Are you relying on all those documents, as
[11] well?

[12] A: Yes, I am.

[13] Q: Let me see that letter, please.

[14] What is the entire Bates range in the file,
[15] please, for the record?

[16] MR. BENNETT: We believe it to be BHLPO1
[17] through 3073 and then I think the witness also
[18] mentioned earlier that he had Kahn and Cameron
[19] depositions.

BY MR. TILLERY:

[20] Q: How many hours have you had in this case

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[1] examples. I don't want to take up your time but the
[2] FCC, at times —
[3] Q: No. Go ahead. I have time to burn.
[4] A: The FCC, at times, would have Congressmen
[5] come over and demand the FCC do something for two
[6] mutually exclusive applicants. The response to that
[7] was always, "Yes, sir, we are going to do this and,
[8] you know, this is a great guy and we are going to
[9] take care of him." Something that would come out
[10] like that. Responding to Congressionals was not
[11] handled by assigning it for somebody to do that type
[12] of research, where it is passing on a consumer
[13] complaint.
[14] Q: So do you just do something to appease that
[15] U.S. senator, is that what it comes down to, to show
[16] them you have done something?
[17] MR. BENNETT: Form objection.
[18] THE WITNESS: In a great many cases, yes, I
[19] would say.

BY MR. TILLERY:

[20] Q: The fact that they wrote letters to these
[21] U.S. senators and told them to tell their

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[1] constituents to go to state consumer protection
[2] agencies means nothing to you, right?
[3] MR. BENNETT: Objection to the form of the
[4] question.
[5] THE WITNESS: I'm not sure that means
[6] nothing. If somebody complained and said, "AT&T is
[7] charging too much," and they said, "Well, go to a
[8] state consumer protection agency," I don't think that
[9] constituted a legal determination about what types of
[10] activities by the state may or may not have been
[11] preempted.

BY MR. TILLERY:

[12] Q: Was AT&T mandated to continue leasing these
[13] phones for any given period of time?

[14] A: No, they were not.

[15] Q: Could they have —

[16] A: I'm sorry. For any given period of time?

[17] Q: Yes.

[18] A: Initially, yes, they were. They were
[19] mandated to continue leasing these phones for the
[20] first two years.

[21] Q: Until January 1, '86?

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[1] A: Yes.

[2] Q: Could they have discontinued the leasing
[3] business at any time after that?

[4] A: I believe so, yes.

[5] Q: They could have, in your view, set any
[6] price they wanted to for the phone leases at any time
[7] after January 1, '86, high or low?

[8] A: Yes. Well —

[9] Q: Without restriction?

[10] A: No. I think that to the extent to which
[11] they engaged in predation, someone could have claimed
[12] that if the conduct was predatory.

[13] Q: How could it be predatory in a competitive
[14] environment?

[15] A: I don't think they would be successful in
[16] winning such a complaint for precisely that reason.

[17] Q: I'm having trouble with your comment here.
[18] You told — you spent some period of time this
[19] morning telling me that it couldn't be predatory in a
[20] competitive environment. You spent some time this
[21] afternoon telling me that as of January 1, '84, it
[22] was highly competitive. Now, how on earth could both

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[1] of those things be true? Explain that to me.

[2] A: I don't think they can. I think your
[3] comment is fair and it could not have been
[4] predatory.

[5] Q: All right.

[6] A: AT&T had no ability to predate in this
[7] market.

[8] Q: Could not do it. There. Not possible;
[9] right?

[10] A: Given — that's correct, because predation
[11] requires the ability to drive competitors out of the
[12] market and to recoup lost profits and there is no
[13] prospect whatsoever of AT&T being able to do that.

[14] Q: Let's go to January 1, '86 and on. AT&T,
[15] in your view, could set any price they wanted to;
[16] correct?

[17] A: Yes.

[18] Q: They could have decided to lease the phones
[19] for 25 cents a month without any agency, federal or
[20] state, interfering in your view?

[21] A: Yes. Yes.

[22] Q: They could have set the prices at \$200 a

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[1] month without any interference by any state or
[2] federal agency; is that correct?
[3] A: Yes, with one or two sort of obscure types
[4] of —
[5] Q: Why don't you tell me what those are.
[6] A: All right. AT&T, now that it is
[7] deregulated, could have engaged in unreasonable, from
[8] an economic perspective, discrimination and could
[9] have, basically, decided that it was going to — to
[10] lease the same phone to somebody who — who did it —
[11] who did three of them at a significant discount over
[12] somebody who did one without having any requirement
[13] to justify that. That was perfectly fine. I don't
[14] think they could charge a different price to people
[15] based on their race or religion. So that's kind of
[16] limited.
[17] Q: I haven't suggested that, have I?
[18] A: No, but you said could they do anything
[19] they want? I said —
[20] Q: No. No. My question to you was could they
[21] charge \$200 a month? I wasn't talking about charging
[22] 200 to blacks and 300 to whites.

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[1] A: You said could they charge any price they
[2] want.
[3] Q: Right.
[4] A: That was the limitation. They could charge
[5] any price they want with a couple — I wasn't trying
[6] to say this is what — this is the central core, I
[7] said except for a couple of obscure examples I could
[8] probably come up with that are constraints on their
[9] ability to price, any other pricing they want to do
[10] is okay.
[11] Q: Any pricing?
[12] A: Yes, subject to the — that type of very
[13] obscure, yes, price level, yes.
[14] Q: Now, let's go through. Is there any
[15] restriction on their disclosures to their customer
[16] base? Can they call this business — call it
[17] anything they want to call it?
[18] A: Consistent with generally applicable — can
[19] they call it anything they want to call it? I think
[20] so.
[21] Q: Okay. So they could send out the bill in
[22] the same envelope as the AT&T long-distance charge

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[1] and not reference it at all?
[2] A: In the same envelope?
[3] Q: Same envelope.
[4] A: And what do you mean, "not reference it"?
[5] Q: Not call it leased equipment, not call it
[6] anything, just tag on a charge. Would that be okay?
[7] A: I'm sorry. Are you talking about a
[8] separate bill in the same envelope?
[9] Q: Yes, let's do that.
[10] A: So it is a separate bill.
[11] Q: That's great. Separate bill in the same
[12] envelope.
[13] A: And not saying at all —
[14] Q: And not calling it anything, just put a
[15] charge on it. Would that be okay?
[16] A: So a bill that says \$4 a month?
[17] Q: It is just a bill, right, to Henry Smith.
[18] MR. BENNETT: Let me object to the
[19] hypothetical.

BY MR. TILLERY:

[20]
[21] Q: What I am trying to find out here is what
[22] the limits are. You said these things are

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[1] preempted. I'm trying to get to the scope of this
[2] level, basically, to find out, according to you, what
[3] limitations the court should impose here.
[4] A: Right. And I guess my answer would be if
[5] Radio Shack could do that for a VCR lease, then AT&T
[6] could not be prohibited from doing it. If the state
[7] has a generally applicable law that says nobody can
[8] send out a monthly bill that doesn't have some
[9] specification of what it is for, then I would think
[10] that that would not be preempted.
[11] Q: Did you mean to say that if Radio Shack
[12] could do it, it was okay —
[13] A: Legally.
[14] Q: — legally, it was okay for AT&T to do it?
[15] A: That if — yes.
[16] Q: All right. So is the converse of that
[17] true? If Radio Shack couldn't do it in compliance
[18] with consumer fraud laws, AT&T, likewise, could not
[19] do it; is that correct?
[20] A: If there is a generally applicable
[21] prohibition on anybody sending out a recurring bill
[22] that doesn't have a statement about what it is for, I

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[1] everybody has to treat the elderly this way," it
[2] would not be preempted.

[3] BY MR. TILLERY:

[4] Q: You state on the bottom of page 27 that
[5] plaintiffs would be free to go to the FCC and seek
[6] reregulation or — of some or all of the residential
[7] CPE marketplace. Do you see that? What's
[8] reregulation as you use it in that context?

[9] A: I — I think I was listening to you and I'm
[10] just looking here at the bottom of page 4 and I don't
[11] see the specific — okay. Now —

[12] Q: It is the top of page 28, I think.

[13] A: Redo a petition, the FCC, indeed, even
[14] today, the last sentence there, reregulation is the
[15] fact that the FCC retains jurisdiction under Title I
[16] over the provision of CPE by AT&T and can adopt any
[17] regulations it believes are necessary to ensure the
[18] public interest is served with respect to that
[19] provision of CPE. It has ousted the states. It has
[20] said this is a matter exclusively within our
[21] jurisdiction. It is free to adopt a rule imposing
[22] requirements on the terms and conditions of the way

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[1] AT&T provides CPE. In the ultimate extreme, if it
[2] found that circumstances had changed significantly or
[3] that it had not anticipated what would happen or
[4] that — that even in some circumstances if it made a
[5] mistake, it could, in fact, adequately — if it could
[6] adequately articulate the reason for the change, go
[7] back and reverse the determination that CPE — the
[8] provision of CPE by a carrier was not itself a common
[9] carrier activity and require AT&T to — to provide
[10] CPE through tariffs. That's — in the new world in
[11] which Congress for the first time has passed explicit
[12] authority for the FCC to both require the — that any
[13] common carrier service not be offered through tariff
[14] and explicitly says, "When you do that, if it is
[15] inconsistent, you preempt the states from similarly
[16] requiring any tariff regulation of that." This is
[17] unlikely to happen with respect to tariff regulation
[18] but it is possible for the FCC to impose a broad
[19] range of potential regulations if it were convinced
[20] that those were necessary to serve a public interest.

[21] Q: Have you seen the joint statement of the
[22] FTC and FCC of 19 — 1996?

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[1] A: Yes, I did.

[2] Q: What do you know about that statement?

[3] A: That was — I reviewed a lengthy file that
[4] was turned over to me and that I made a lot of the —
[5] all types of — simply an infinite number of drafts
[6] of memos and letters. My understanding is that a
[7] group of consumer advocates and maybe some political
[8] groups, as well, brought to the attention of the FTC
[9] and the FCC their view that AT&T was behaving
[10] improperly with respect to the provision of CPE and
[11] that the FCC felt politically it had to respond to it
[12] regardless — I'm not saying that they believed there
[13] were absolutely no merits to it but it really didn't
[14] matter whether there were any merits to it. It was
[15] political necessity to respond. Their preference was
[16] to try and engage in some type of voluntary action
[17] that would eliminate the need on their part to
[18] conduct formal proceedings, and that ultimately
[19] AT&T — I think the lead agency on those discussions
[20] was the FTC, and that ultimately AT&T reached some
[21] accommodation with the FTC about the actions they
[22] would take to eliminate the prospect of any FTC

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[1] action and then, you know, from the FCC's
[2] perspective, it went away. They didn't have to deal
[3] with it because the FTC —

[4] Q: How did it go away?

[5] A: They then did not have to conduct a formal
[6] rulemaking proceeding looking at adopting new rules.

[7] Q: Why didn't they? Why didn't they have to
[8] do that? How did the problem go away?

[9] A: They didn't have to do that because in
[10] their — I don't believe anybody had filed a petition
[11] for rulemaking with them, which would have been
[12] subject to the Administrative Procedures Act, but
[13] the — as I recall from the — the documents and my
[14] clear understanding from being involved with the FCC
[15] when I was there, as well as following the conduct of
[16] the FCC at that point in time, was, you know, when
[17] there was an issue like this, and it happened with
[18] other issues, there was a political need to have some
[19] type of action taken so the FCC looked like it was
[20] doing something.

[21] Q: Are you aware of any complaints made by
[22] United States senators to the FCC in relation to

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[1] AT&T's leasing of CPE?
[2] A: When you say, "complaints," you mean
[3] objections rather than complaints?
[4] Q: Complaints. I'm sorry?
[5] A: "Complaint" is a formal technical term for
[6] something people file with the FCC. Is that what you
[7] are referring to or do you mean in the English
[8] language —
[9] Q: I'm not using it as I would in filing a
[10] lawsuit —
[11] A: Okay. At the FCC, that's called a
[12] complaint.
[13] Q: — or filing a formal document with
[14] challenging rulemaking authority or this sort of the
[15] thing with the FCC. I'm talking about being a little
[16] bit agitated because one of your constituents from
[17] your home state is mad as hell about something that's
[18] gone on with the CPE and they write you a letter.
[19] A: Yes.
[20] Q: And as a result of that, you then fire off
[21] a letter or your staff does, and you sign it, to the
[22] FCC. Are you aware of those?

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[1] A: Yes. I — I recall seeing, I think, a
[2] couple of those, at least. The reason I said this is
[3] the complaint is a term of art with respect to
[4] documents filed with the FCC.
[5] Q: I understand. As I have used the term in
[6] my questioning, and I have clarified it, are you
[7] familiar with those?
[8] A: Yes. Yes. Yes.
[9] Q: Okay. What did the FCC say in response to
[10] those?
[11] A: Oh, gee. As I recall, they said, "We are
[12] working hard with the FTC, taking a look at this, and
[13] are going to take action to ensure that the — that
[14] these things are addressed," I mean some type of —
[15] Q: Is that what they said?
[16] A: I'm not sure. That would be my guess. I
[17] recall reading through all of those voluminous
[18] documents but I can't specifically recall.
[19] Q: You don't remember them saying they had no
[20] jurisdiction, please refer your constituents to the
[21] state Better Business Bureau or to the state consumer
[22] protection agencies? Were you aware of that?

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[1] A: I — I probably was when I looked at it but
[2] I would have to go back and review what it was they
[3] said they had no jurisdiction over.
[4] Q: So if the FCC referred these people to
[5] state consumer protection agencies, what does that
[6] mean to you? Over the precise claims that — that
[7] are being — are being alleged in this particular
[8] case?
[9] MR. BENNETT: Foundation objection.
[10] THE WITNESS: What it would mean to me is
[11] the FCC didn't want to deal with it.
[12] BY MR. TILLERY:
[13] Q: Means they are wrong? Are they wrong when
[14] they write those letters?
[15] A: It means they didn't want to deal with it.
[16] That's what it would mean to me.
[17] Q: That doesn't shed any light on any of the
[18] basis of any of your opinions?
[19] A: Oh, no. A congressional response like
[20] that —
[21] Q: Right.
[22] A: — is not treated as a legal determination

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[1] in any way whatsoever. It is — these are handled by
[2] staff who don't even attempt to make those types of
[3] legal determinations.
[4] Q: When you say, "a congressional response,"
[5] what are you talking about?
[6] A: A response to a member of Congress. It's
[7] called a congressional. I mean the FCC always would
[8] call that a congressional. I think other agencies
[9] did, too.
[10] Q: So they don't have to be accurate when they
[11] are talking to a U.S. senator, is that what you are
[12] saying, they can sort of bullshit them; is that what
[13] you are saying?
[14] A: I would say they routinely do, yes.
[15] Q: Okay. And that's okay?
[16] A: I — I'm not sure by okay.
[17] Q: Okay. Well, you pick the word to describe
[18] it.
[19] A: Okay. I think that's inevitable given the
[20] number and types of congressional request complaints,
[21] directives that come over by letter, that it is a —
[22] a well-understood phenomenon. I can give you other

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[1] MR. BENNETT: I object to the form of the
[2] question because it is vague with regard to "these
[3] people."

[4] THE WITNESS: No.

[5] BY MR. TILLERY:

[6] Q: They didn't?

[7] A: Not by virtue of the order, no.

[8] Q: How did they become phone lease customers?

[9] A: There were two different ways they became
[10] phone lease customers. One is they are people who
[11] prior to 1984, on the basis of an order that was
[12] negotiated with AT&T, discussed with all other
[13] parties, the Congressmen, the consumer groups, the
[14] competitors, wrote in, in response to the
[15] solicitation, and said, "I would like to become an
[16] AT&T lease customer." I mean that has nothing to do
[17] with the order. They filled something out.

[18] Q: So somebody — the people voluntarily
[19] subscribed?

[20] A: Well, they responded. They were sent a
[21] solicitation, which said, "You have to make a
[22] decision."

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[1] Q: When did they get that solicitation?

[2] A: December, I'm not sure what day. I think
[3] multiple dates in December. Said, "The world is
[4] changing." There was lots of publicity and other
[5] things.

[6] Q: You are talking about 1983, aren't you?

[7] A: Yes, I am.

[8] MR. TILLERY: How much time is left on
[9] the —

[10] MR. KING: Five minutes.

[11] BY MR. TILLERY:

[12] Q: Go ahead.

[13] A: And so in response to this, that said, "You
[14] have to make a decision," some people made
[15] decisions. They — some of those are the people who
[16] made decisions, said, "I want to buy." Some of the
[17] people who made decisions said, "I want to lease."
[18] There was a very large number of people who, despite
[19] being told they had to make a decision, refused to do
[20] so or declined to do so. I'm not sure if there is a
[21] difference in those two worlds.

[22] Q: How many people said they wanted to

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[1] continue to lease?

[2] A: I don't know the answer to that. I guess
[3] 10 to 15 percent but that's nothing but a pure guess.

[4] Q: Are you guessing or you don't know?

[5] A: I don't know.

[6] MR. TILLERY: Let's go off the record and
[7] change tapes at this point in time.

[8] MR. KING: It is 5:26 and this is the end
[9] of tape 3.

[10] (Recess.)

[11] BY MR. TILLERY:

[12] Q: Do you have your report in front of you,
[13] sir?

[14] A: Yes, I do.

[15] MR. KING: Would you like me to turn the
[16] tape back on?

[17] MR. TILLERY: Yes, please.

[18] This is the beginning of tape 4?

[19] MR. KING: Yes. The time is 5:40. This is
[20] the beginning of tape 4 in the Albert Halprin
[21] deposition.

[22] THE WITNESS: Can I finish? I was actually

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[1] in the middle of an answer when the tape was running
[2] out, when you did it, because I was talking about the
[3] two ways that somebody became a customer of a lease
[4] customer of AT&T.

[5] BY MR. TILLERY:

[6] Q: That's right.

[7] A: And I had gotten to the first one and you
[8] asked questions about that and never got to finish
[9] with the second.

[10] Q: Right.

[11] A: And I don't essentially feel I have to do
[12] it if you want to go on to something else.

[13] Q: Go ahead.

[14] A: As I said, the first way was that some
[15] number of customers checked the box and wrote in and
[16] said, "I want to become an AT&T lease customer."

[17] Q: I asked you how many of those there were
[18] and you said you didn't know.

[19] A: I did not. I made a rough guess but I do
[20] not know.

[21] Q: All right. How is the second?

[22] A: The second way that somebody became a lease

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[1] customer is that pursuant to FCC order, which is what
[2] we call the modified limited option, even though they
[3] weren't told what would happen if they didn't
[4] respond, the FCC faced the question of what to do
[5] with those people who didn't respond, and as I
[6] testified earlier, in some ways this was one of the
[7] hardest, if not the hardest issue to decide about
[8] this, and the decision that the FCC made after lots
[9] of consultation with people on the Hill and others
[10] was that at this time of disruption, to take people
[11] who said nothing and to change one more thing about
[12] the way life was treating them in the
[13] telecommunications world would have, quite possibly,
[14] increased the political pressure against this, which
[15] was considerable, the whole deregulation and consent
[16] decree movement, to an intolerable level, and even
[17] though the FCC believed, as you suggested earlier,
[18] that requiring that these people stay as customers at
[19] unreasonably low rates, uneconomically low rates for
[20] two years, interfered with the full development of
[21] competition and didn't want to do that, it believed
[22] that of a set of bad — bad alternatives, it was the

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[1] least bad alternative. And so those people who,
[2] being told you have to make a choice, still declined
[3] to do so, saw as little change as possible from their
[4] perspective, although there was a change because they
[5] now became for the first time AT&T lease customers.

[6] Q: And that was the modified negative option.

[7] A: That's correct.

[8] Q: They did nothing and they became a lease
[9] customer?

[10] A: They didn't know that that would happen but
[11] we had to do something with them. I mean somebody —
[12] some of the expert reports and testimony I had seen
[13] here said, "You should have made them make a choice."
[14] We thought we were making them. We told them — we
[15] had AT&T propose a plan and tell them, "You have to
[16] make a choice," but then when they declined to do so,
[17] that is correct, we — we — we determined, told AT&T
[18] to file that. AT&T filed it, quote, "voluntarily,"
[19] but then we said, "This is the plan you have to
[20] follow." Those people at that point had to. AT&T
[21] had no choice but to make them lease customers.

[22] Q: Are you finished?

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[1] A: Yes, sir.

[2] Q: All right. In your report on the top of
[3] page 23, you state that the FCC preempted, quote,
[4] "utility regulation," end quote, of AT&T's CPE
[5] marketing practices. What do you mean by "utility
[6] regulation"?

[7] A: Tariff or tariff-like regulation.

[8] Q: Or tariff-like regulation?

[9] A: Yes.

[10] Q: What does that mean?

[11] A: Regulation that was the equivalent of
[12] tariff regulation.

[13] Q: Is state consumer fraud law that defines
[14] abusive marketing practices a utility regulation?

[15] A: Not necessarily.

[16] Q: Can it be?

[17] A: Yes. I — once again, I will give you an
[18] example. Insofar as the law requires, quote,
[19] "fairness," and somebody, an enforcement official,
[20] whether judicial or administrative, deems fairness to
[21] mean you can't raise the rate for five years, that is
[22] utility regulation, even if it is done under the

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[1] authority granted to a court or other state official
[2] by a consumer protection law.

[3] Q: On — you also state in your report on page
[4] 23 that, "The FCC preempted any AT&T specific
[5] regulations or rules applied to any defined special
[6] groups that AT&T may have continued to serve, such as
[7] the elderly or disabled." Do you see that?

[8] A: Yes.

[9] Q: Is it your testimony that the FCC preempted
[10] the ability of a state to enforce any consumer
[11] protection law designed to protect the elderly or
[12] disabled against a marketing practice involving CPE?

[13] MR. BENNETT: Objection to the form of the
[14] question.

[15] THE WITNESS: That's different from what I
[16] said here but — but the answer is if it was only
[17] applied to CPE? I think that it would raise, at a
[18] minimum, serious questions about whether it was
[19] utility substitute regulation, an attempt to achieve
[20] utility regulation, tariff regulation through the
[21] back door, and it might. If it was a general
[22] requirement that says, "With respect to everything,

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[1] Q: Yes.
[2] A: Slamming, as I — I understand it in the
[3] communications context —
[4] Q: Right.
[5] A: — relates to long-distance service itself
[6] and, no, the answer is no.
[7] Q: Couldn't happen here, could it?
[8] A: I'm sorry. It — if one defines it as
[9] long-distance service —
[10] Q: No. Where is long-distance coming from?
[11] A: Oh, I — that's what I am saying. That's
[12] how I understand the use of the term "slamming." I
[13] haven't heard the word "slamming" —
[14] Q: You use the term "slamming" only in the
[15] context of — of long-distance service; right?
[16] A: That's — in the communications context,
[17] that's the only time I have heard it used.
[18] Q: Really?
[19] A: Yes. I have heard other terms used for
[20] other abuses but — like cramming and stuff like
[21] that, but slamming, yes, I don't recall ever having
[22] heard it used for something other than long-distance

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[1] service in the communications context.
[2] Q: Do you know if slamming occurred here in
[3] this case with respect to lease customers?
[4] MR. BENNETT: Objection to the form of the
[5] question. It is vague and ambiguous.
[6] BY MR. TILLERY:
[7] Q: Slamming?
[8] A: If by "slamming" you mean taking a customer
[9] who — and — you know, who did not want the service
[10] and signing him up for it?
[11] Q: Yes.
[12] A: I don't know if it — if it occurred, no, I
[13] don't know.
[14] Q: If it occurred, would that act be
[15] preempted?
[16] A: I would — I would think that if there is a
[17] state prohibition on doing that type of activity,
[18] which I hope there is, that has nothing to do with
[19] whether it is CPE, long-distance, or adding machines,
[20] you know, or video recorders. I would not think it
[21] would be preempted in this case.
[22] Q: You consider negative optioning to be

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[1] anti-consumer —
[2] MR. BENNETT: Objection to the form.
[3] Q: — practice?
[4] MR. BENNETT: I object to the form of the
[5] question.
[6] THE WITNESS: Once again, as I said before,
[7] it depends on the circumstances but I would generally
[8] disfavor it. Let me amend that. The — I think —
[9] the reason I find it to be a hard question is that if
[10] a negative option is used to have somebody do
[11] something new or different, then I think I would
[12] generally disfavor it, consider it to be a bad thing,
[13] but, if, for example, somebody sends me a
[14] solicitation to buy something new, buy an add-on, buy
[15] an enhancement, double, you know, my purchase of
[16] something, and says, "You don't have to buy this and
[17] if you do nothing, you will continue the way it has
[18] gone along up until now" —
[19] BY MR. TILLERY:
[20] Q: What will continue on the way it's gone on?
[21] A: Whatever it is you are doing, whatever you
[22] have been doing up until then.

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[1] Q: Wait a minute. Have you been their
[2] customer or not?
[3] A: I'm sorry?
[4] Q: Have you been their customer?
[5] A: If — the answer is if I am their — if I
[6] am their customer or becoming their customer at that
[7] time —
[8] Q: Would becoming their customer —
[9] A: Can I just finish the sentence? I just
[10] want to finish the sentence that I was doing and then
[11] you can ask the question. What I was saying is that
[12] if somebody, for example, sends me a letter and says,
[13] "We would like you to buy a second, you know, cable
[14] TV hookup," or something like that, "you only have to
[15] get in touch with us if you want it, and if you do
[16] nothing, everything will continue the way it is," if
[17] somebody did that, I would not automatically consider
[18] that. I would consider that a pro-consumer rather
[19] than negative consumer in that case.
[20] Q: Is that set of facts applicable to this
[21] case in any way?
[22] A: No, this doesn't have a negative option.

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[1] It has a very different circumstance.

[2] Q: Actually, didn't this case have what you
[3] described as a modified negative option?

[4] A: Which I think is very different. Would you
[5] like me to tell you why?

[6] Q: Did AT&T have these people as their phone
[7] lease customers prior to January 1, '84?

[8] MR. BENNETT: Object to the form of the
[9] question.

[10] THE WITNESS: There is no —

[11] BY MR. TILLERY:

[12] Q: Excuse me. Just answer my question.

[13] MR. BENNETT: I object to the — because I
[14] think it may call for some sort of legal conclusion,
[15] and also object to the form of the question.

[16] THE WITNESS: The answer is they weren't —
[17] they were tariff customers of the Bell Operating
[18] Companies, which at that point was the Bell system,
[19] so they were the Bell system customers prior to —
[20] the day prior to January 1st, '84. Subsequent to
[21] that, the Bell system was broken up and, in terms —
[22] I mean this is — I don't know technically the answer

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[1] where you have a divestiture, whether for lots of
[2] purposes, you continued to be staying with the same
[3] entity. I know for things — because they came up,
[4] for things like pensions and other things, you were
[5] considered — AT&T was considered to be the same as
[6] the Bell system and I — I legally don't know, the
[7] way you are asking it, whether they were the same,
[8] but —

[9] Q: Are you — wait a minute. Are you taking
[10] the position that these were AT&T customers prior to
[11] January 1, '84 —

[12] MR. BENNETT: Same objections.

[13] BY MR. TILLERY:

[14] Q: — for — for phone lease purposes?

[15] MR. BENNETT: Same objections.

[16] THE WITNESS: As I said, there were Bell
[17] system customers, there were customers of the BOCs,
[18] not AT&T. There was no AT&T prior to 1984.

[19] BY MR. TILLERY:

[20] Q: When did — when did these people, these
[21] embedded based customers, become for the very first
[22] day AT&T phone lease customers?

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[1] MR. BENNETT: Same objections.

[2] THE WITNESS: On January 1st, 1984. There
[3] were no phone leases before that date.

[4] BY MR. TILLERY:

[5] Q: Okay. All right. And so AT&T did not have
[6] them, and "them" we are talking about what? How many
[7] million? 80 million, you said? Didn't have these 80
[8] million customers the day before?

[9] A: There was no AT&T the day before.

[10] MR. BENNETT: Same objections.

[11] BY MR. TILLERY:

[12] Q: Is that right? They didn't have them the
[13] day before?

[14] A: There was no AT&T the day before.

[15] MR. BENNETT: Same objections.

[16] BY MR. TILLERY:

[17] Q: So would your answer to that question be
[18] yes, they did not have them the day before?

[19] MR. BENNETT: Same objections previously
[20] stated.

[21] BY MR. TILLERY:

[22] Q: Is that correct, sir?

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[1] A: That is correct, subject to the fact that,
[2] as I said, for some purposes, AT&T was deemed to be
[3] the same as the Bell system that I know about. I
[4] don't know here.

[5] Q: Well, that's what I am asking you. You
[6] keep hedging.

[7] A: Okay.

[8] Q: Now, what I am saying, are you saying that
[9] these people were AT&T customers before January 1,
[10] '84 —

[11] MR. BENNETT: Same objections.

[12] BY MR. TILLERY:

[13] Q: — by virtue of having been Bell Operating
[14] Company tariff — bundled tariff subscribers? Were
[15] they AT&T phone lease customers before?

[16] A: No, they were not customers of the new AT&T
[17] by virtue of being Bell Operating customers before.

[18] Q: And then by virtue of an order which was
[19] negotiated, in part, by you and your compatriots at
[20] FCC with the — with AT&T and the entry of an order,
[21] these people became, on January 1, '84, phone lease
[22] customers of AT&T; correct?

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[1] THE WITNESS: Would I call it an
[2] innovation?

[3] BY MR. TILLERY:

[4] Q: Yes.

[5] A: Given history here, the answer is yes. I
[6] would, you know, with 100 years of declaration that a
[7] phone can't be sold, yes, the first time people said,
[8] "Gee, we can sell phones," I think it was an
[9] innovation.

[10] Q: But you don't consider them to be distinct
[11] in terms of their technological — they're precisely
[12] the same item. As a matter of fact, you could even
[13] buy the leased phone, couldn't you?

[14] A: Yes, that's correct.

[15] Q: So —

[16] A: Although I'm not sure if you — if the — I
[17] don't know if — I'm not sure that the converse is
[18] true. I'm not sure if you could lease every phone
[19] that you could buy, but I think you could buy every
[20] phone you could lease.

[21] Q: Okay. When did the competition peak?

[22] MR. BENNETT: Objection to the form of the

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[1] question.

[2] THE WITNESS: When did competition in the
[3] CPE market peak?

[4] BY MR. TILLERY:

[5] Q: Right, if it ever did.

[6] A: I'm not sure that it ever has. I mean I
[7] think it is an intensely competitive market today. I
[8] think it's been an intensely competitive market.

[9] Q: Since when?

[10] A: Since 1990. Maybe before that. I think it
[11] is — it was — it has been a very competitive market
[12] since 19 — January 1st, 1984.

[13] Q: Why? What caused it to be a very
[14] competitive market since on 1, '84?

[15] A: The institution of the Computer II
[16] decision, which all of a sudden declared that this
[17] was a market which no longer was a tariffed regulated
[18] market.

[19] Q: Did the FCC ever reach the conclusion that
[20] lease charges were artificially low in '84 and '85,
[21] let's say?

[22] A: I'm not sure if they explicitly reached

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[1] that decision. They adopted what was called the
[2] Pompino plan, which was the phase-out of CPE from
[3] separations, which was based upon — the reason it
[4] was necessary to do that, the findings there
[5] necessarily implied that they were kept artificially
[6] low, but even though people repeatedly presented
[7] earnings — evidence of that to the FCC, and even
[8] though, I believe, the preliminary determination of
[9] the district court in the consent decree was that
[10] through cross-subsidization, CPE prices were kept
[11] artificially and unreasonably low, I'm not aware of
[12] the FCC reaching that decision explicitly.

[13] Q: The prices were frozen for the leased
[14] phones in '84 and '85; correct?

[15] A: That's correct. They were set and frozen.

[16] Q: Right.

[17] A: I mean for some people, they went up
[18] slightly and for some people they went down.

[19] Q: But, generally, the same price?

[20] A: It was the same price for the two years —

[21] MR. BENNETT: Foundation.

[22] THE WITNESS: — thereafter, but, yes,

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[1] there was a national price down.

[2] BY MR. TILLERY:

[3] Q: And that was more or less consistent with
[4] the prices that they had been before, weren't they?

[5] A: Yes. Yes. It was —

[6] Q: And those were artificially low prices?

[7] A: Yes, they were.

[8] Q: Then can you tell me how on January 1, '84,
[9] with an artificially low price, this was an intensely
[10] competitive market?

[11] A: Yes. The Bell system and AT&T have done
[12] such a horrible job of marketing and had such a
[13] limited set of offerings that anybody or virtually
[14] anybody who wanted a different type of phone couldn't
[15] get it from the Bell system. The most noteworthy
[16] portion of that is that all Bell phones were, I would
[17] say, over-engineered, gold-plated phones, partly
[18] because this is a — this is what they were expected
[19] to do in a regulatory environment and partly because
[20] the incentives are all to do this in — in a
[21] regulatory environment. They built phones to last 50
[22] years, phones that would be taken in and repaired and

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[1] replaced. Those phones were underpriced vis-a-vis
[2] what they were, but now people were coming in with
[3] phones that you could buy for 10 bucks. Or one thing
[4] I remember vividly was something strike you, like the
[5] Mickey Mouse phone, was an ad: With a year's
[6] subscription to Sports Illustrated, they gave you a
[7] giveaway, I mean I was just watching this and saying,
[8] "Geez, the world has changed." They gave you as a
[9] giveaway a little phone shaped like a basketball. So
[10] because now people — the phones they were offering
[11] were at too low a price for what they were, but the
[12] market, even though it is a single market, they were
[13] basically offering underpriced Cadillacs and all of a
[14] sudden Volkswagens came in that hadn't been permitted
[15] before and took a heck of a lot of the market away
[16] rapidly.
[17] Q: So their price, which was fixed pre-1984
[18] and stayed stable for the next two years, was
[19] mandated as being stable for the next two years, was
[20] a — was not an impediment to full competition
[21] because of low-priced alternative phones; is that
[22] what you are saying?

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[1] A: I'm saying if you use the word "full
[2] competition" — I mean remember when it was mandated,
[3] the FCC approved the voluntary AT&T plan, just like
[4] all the others, but it was mandated. But the answer
[5] is it was an impediment to full competition. The
[6] reason that the plan was transitional is, as I told
[7] you, there was a balance being done between political
[8] concerns, concerns for consumers, concern for
[9] developing full competition. That was the balance.
[10] There is no question at all that the FCC believed, I
[11] think accurately, that it would become even more
[12] competitive, as I think it did, after that price
[13] freeze was eliminated. So the — it wasn't a belief
[14] that it could be fully competitive under the freeze.
[15] That was part of the balancing that was done, which
[16] is — is what the FCC does. It balances competing
[17] interests in very complex cases like that.
[18] Q: Let's switch gears here just a little bit,
[19] okay? We will come back to these in a bit.
[20] Are negative options generally considered
[21] lawful means of doing business?
[22] MR. BENNETT: Objection to the form of the

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[1] question.
[2] THE WITNESS: I don't know about
[3] "generally." To the extent to which — people are,
[4] generally, not permitted to go to someone and say,
[5] "Unless you tell me otherwise, I will deem that you
[6] have agreed to do the following," and then send you a
[7] list of any types of conditions.
[8] BY MR. TILLERY:
[9] Q: Do you know of any negative option schemes
[10] that have been prohibited by law?
[11] A: I don't know specific ones but I would
[12] expect and certainly hope that ones of that type have
[13] been.
[14] Let me just — you are talking about what I
[15] call pure negative options; right?
[16] Q: That's what I have been asking you.
[17] A: Okay. All right. I mean I — to the best
[18] of my knowledge, I can say I'm not aware of anything
[19] that I would call a modified negative option scheme
[20] such as what we did being declared unlawful but one
[21] where somebody, you know, writes to you and says,
[22] "You have ordered a full range of the following

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[1] unless you write to me next week," I would assume
[2] would be improper.
[3] Q: Do you know if there is any specific
[4] Federal Regulations prohibiting telecommunications
[5] carriers from using a negative option notice to
[6] obtain customers?
[7] A: To obtain customers?
[8] Q: That's correct. To obtain a customer.
[9] A: I would assume — I think so and I would
[10] certainly assume so. In other words, if — to tell
[11] somebody, "I'm going to sign you up for my service
[12] unless you tell me otherwise," yes, I mean that —
[13] that would be slamming.
[14] Q: "Slamming," that's a term I haven't heard
[15] in a while. What does that mean?
[16] A: "Slamming" means assigning a customer to a
[17] carrier who — which he or she has not selected.
[18] Q: Do you know if there is any slamming in
[19] this case?
[20] A: I am not aware of any.
[21] Q: Nobody has ever told you of any, have they?
[22] A: Slamming?